

103^D CONGRESS
2^D SESSION

H. R. 4229

To amend the Solid Waste Disposal Act to enable Indian tribes to enforce provisions of the Act relating to leaking underground storage tanks on Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 1994

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

A BILL

To amend the Solid Waste Disposal Act to enable Indian tribes to enforce provisions of the Act relating to leaking underground storage tanks on Indian lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. UNDERGROUND STORAGE TANKS IN INDIAN**
4 **COUNTRY.**

5 (a) DEFINITIONS.—Section 9001 of the Solid Waste
6 Disposal Act (42 U.S.C. 6991) is amended by adding at
7 the end the following new paragraphs:

8 “(9) The term ‘Indian country’ means—

1 “(A) all land within the limits of any In-
2 dian reservation under the jurisdiction of the
3 United States Government, notwithstanding the
4 issuance of any patent, and including rights-of-
5 way running through the reservation;

6 “(B) all dependent Indian communities
7 within the borders of the United States, wheth-
8 er within the original or subsequently acquired
9 territory thereof and whether within or without
10 the limits of a State; and

11 “(C) all Indian allotments, the Indian ti-
12 tles to which have not been extinguished, in-
13 cluding rights-of-way running through such al-
14 lotments.

15 “(10) The term ‘Indian tribe’ means any Indian
16 tribe, band, nation, pueblo, group, or community, in-
17 cluding any Alaska Native village, organization, or
18 regional corporation as defined in or established pur-
19 suant to the Alaska Native Claims Settlement Act,
20 which is recognized by the Secretary of the Interior
21 and exercising governmental authority within Indian
22 country.”.

23 (b) PRIMARY ENFORCEMENT RESPONSIBILITIES OF
24 INDIAN TRIBES.—Subtitle I of the Solid Waste Disposal
25 Act is amended by redesignating section 9010 as section

1 9011 and by inserting after section 9009 the following new
2 section:

3 **“SEC. 9010. INDIAN TRIBES.**

4 “(a) GENERAL AUTHORITY.—Subject to the provi-
5 sions of subsection (b), the Administrator—

6 “(1) may delegate to Indian tribes described in
7 subsection (b) primary enforcement responsibility for
8 programs and projects under this subtitle in Indian
9 country;

10 “(2) may provide Indian tribes grant and con-
11 tract assistance to carry out functions under this
12 subtitle in Indian country; and

13 “(3) may enter into cooperative agreements
14 with Indian tribes in carrying out this section.

15 “(b) CONDITIONS.—The Administrator may make a
16 delegation under subsection (a)(1) to an Indian tribe only
17 if—

18 “(1) the Indian tribe has a governing body car-
19 rying out substantial governmental duties and
20 powers;

21 “(2) the functions to be exercised by the Indian
22 tribe pertain to land and resources which are held
23 by the Indian tribe, held by United States in trust
24 for the Indian tribe, held by a member of the Indian
25 tribe if such property interest is subject to a trust

1 restriction on alienation, or are otherwise within In-
2 dian country; and

3 “(3) the Indian tribe is reasonably expected to
4 be capable, in the Administrator’s judgment, of car-
5 rying out the functions to be exercised in a manner
6 consistent with the terms and purposes of this sub-
7 title and of all applicable regulations.

8 “(c) EPA REGULATIONS.—(1) The Administrator
9 shall, not later than 12 months after the date of the enact-
10 ment of this section, promulgate final regulations that
11 specify how Indian tribes may exercise primary enforce-
12 ment responsibility under this subtitle.

13 “(2) For any provision of this subtitle where the exer-
14 cise of primary enforcement responsibility by Indian tribes
15 is inappropriate, administratively infeasible, or otherwise
16 inconsistent with the purposes of this subtitle, the Admin-
17 istrator may include in the regulations promulgated under
18 this section means for the direct implementation of such
19 provision by the Environmental Protection Agency in a
20 manner that will achieve the purpose of the provision.
21 Nothing in this section shall be construed to allow Indian
22 tribes to assume or maintain primary enforcement respon-
23 sibility for programs under this subtitle in a manner less
24 protective of human health and the environment than such
25 responsibility may be assumed or maintained by a State.

1 An Indian tribe shall not be required to exercise criminal
2 jurisdiction for purposes of complying with the preceding
3 sentence.

4 “(d) COST SHARE.—An Indian tribe shall not be re-
5 quired to pay any portion of the cost of corrective actions
6 undertaken by either the Administrator or by the Indian
7 tribe under a cooperative agreement if, in the judgment
8 of the Administrator, such requirement would impose an
9 undue burden on the Indian tribe or be inappropriate, ad-
10 ministratively infeasible, or otherwise inconsistent with the
11 purposes of this subtitle or the Federal trust responsibility
12 to Indian tribes.

13 “(e) COOPERATIVE AGREEMENTS.—In order to en-
14 sure the consistent implementation of the requirements of
15 this subtitle, an Indian tribe and the State or States in
16 which the lands of such Indian tribe are located may enter
17 into a cooperative agreement, subject to the review and
18 approval of the Administrator, to jointly plan and admin-
19 ister the requirements of this subtitle in Indian country.

20 “(f) STUDY OF UNDERGROUND STORAGE TANKS
21 WITHIN INDIAN COUNTRY.—(1) Not later than 12
22 months after the date of enactment of this section, the
23 Administrator shall complete a study and inventory of all
24 underground storage tanks located within Indian country.
25 The study shall include—

1 “(A) an assessment of the ages, types (includ-
2 ing methods of manufacture, coatings, protection
3 systems, the compatibility of the construction mate-
4 rials and the installation methods) and locations (in-
5 cluding the climate of the locations) of such tanks;

6 “(B) soil conditions, water tables, and the
7 hydrogeology of the tank locations;

8 “(C) the relationship between the factors speci-
9 fied in subparagraphs (A) and (B) and the likelihood
10 of releases from underground storage tanks;

11 “(D) the effectiveness and costs of inventory
12 systems, tank testing, and leak detection systems;
13 and

14 “(E) such other factors as the Administrator
15 deems appropriate.

16 “(2) Upon completion of the study required by para-
17 graph (1), the Administrator, in cooperation with the Sec-
18 retary of the Interior and the Director of the Indian
19 Health Service, shall submit to Congress a report contain-
20 ing the findings of the study and recommendations for ad-
21 dressing underground storage tanks within Indian coun-
22 try.

23 “(g) TRIBAL LEAKING UNDERGROUND STORAGE
24 TANK TRUST FUND.—(1) The Administrator shall estab-
25 lish a Tribal Leaking Underground Storage Tank Trust

1 Fund (hereafter in this subsection referred to as the ‘trust
2 fund’) and shall use such funds for payment of costs in-
3 curred for corrective action within Indian country under
4 this subtitle.

5 “(2) The trust fund shall consist of amounts depos-
6 ited pursuant to section 9508(c)(1)(B) of the Internal
7 Revenue Code of 1986.

8 “(3) The Administrator may provide funds from the
9 trust fund for the reasonable costs of an Indian tribe’s
10 actions under a cooperative agreement between the Ad-
11 ministrator and such Indian tribe setting out the correc-
12 tive actions and enforcement activities to be taken by the
13 Indian tribe.

14 “(4) The Administrator shall allow an Indian tribe
15 to recover from the trust fund its reasonable costs in-
16 curred before the enactment of this section for corrective
17 and enforcement actions related to releases into the envi-
18 ronment from underground storage tanks located within
19 Indian country under its jurisdiction if—

20 “(A) the Indian tribe notified the Environ-
21 mental Protection Agency and Bureau of Indian Af-
22 fairs of the release from an underground storage
23 tank; and

24 “(B) the Environmental Protection Agency and
25 the Bureau of Indian Affairs failed—

1 “(i) to require the owner or operator of the
2 underground storage tank to undertake correc-
3 tive action with respect to the release; or

4 “(ii) to undertake corrective action with re-
5 spect to such release when such action was nec-
6 essary, in the judgment of the Administrator,
7 the Secretary of the Interior, or the Indian
8 tribe, to protect human health and the environ-
9 ment.”.

10 (c) APPROPRIATIONS.—(1) Section 2007(f)(1) of the
11 Solid Waste Disposal Act (42 U.S.C. 6916(f)(1)) is
12 amended by adding at the end the following: “Not less
13 than 1½ percent of the amount appropriated under this
14 paragraph shall be used by the Administrator to carry out
15 section 9010 of this Act (relating to the regulation of un-
16 derground storage tanks within Indian country).”.

17 (2) Section 2007(f)(2) of the Solid Waste Disposal
18 Act (42 U.S.C. 6916(f)(2)) is amended by adding at the
19 end the following: “Not less than 1½ percent of the
20 amount appropriated under this paragraph shall be used
21 by the Administrator to make grants to Indian tribes for
22 purposes of assisting Indian tribes in the development and
23 implementation of approved tribal underground storage
24 tank release detection, prevention, and correction pro-
25 grams under subtitle I.”.

1 (d) TABLE OF CONTENTS.—The table of contents of
2 the Solid Waste Disposal Act, contained in section 1001
3 of such Act, is amended by redesignating the item relating
4 to section 9010 as 9011 and by inserting after the item
5 relating to section 9009 the following new item:

“Sec. 9010. Indian tribes.”.

6 **SEC. 2. SET ASIDE FOR TRIBAL LEAKING UNDERGROUND**
7 **STORAGE TANK TRUST FUND.**

8 Section 9508(c)(1) of the Internal Revenue Code of
9 1986 is amended—

10 (1) by striking “Except as provided” and in-
11 serting the following:

12 “(A) PURPOSES.—Except as provided”;

13 and

14 (2) by adding at the end the following new sub-
15 paragraph:

16 “(B) SET ASIDE FOR INDIAN TRIBES.—

17 Notwithstanding any other provision of law, for
18 each of the fiscal years 1995 through 1999, the
19 Secretary shall deposit an amount equal to not
20 less than 3 percent of the amounts made avail-
21 able to States pursuant to subparagraph (A) in
22 the Tribal Leaking Underground Storage Tank
23 Trust Fund to be administered by the Adminis-
24 trator of the Environmental Protection Agency.

1 Such amounts shall be used only by Indian
2 tribes (as defined in section 9001(10) of the
3 Solid Waste Disposal Act) to carry out the pur-
4 poses referred to in subsection 9010(g) of the
5 Solid Waste Disposal Act.”.

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